

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3188 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SOMAJI MANAJI CHAUHAN

Versus

DISTRICT MAGISTRATE

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Appearance:

MR VIJAY H PATEL for Petitioner

MR KC SHAH, A.G.P., for Respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 04/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner - detenu - Somaji Manaji Chauhan, has brought under challenge the detention order dated 16th September 1995 rendered by respondent No.1 u/s. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act".

2. The grounds on which the impugned order of detention has been passed appear at Annexure : C to the petition. They inter alia indicate that the petitioner has been carrying on criminal and anti-social activities of obtaining unlawful financial benefit by illegally grabbing the land reserved for Ahmedabad Urban Development Authority (AUDA) for public housing. Reference in this connection has been made to the plots of land bearing, inter alia, final plot Nos.287 and 292. Reference has been made to the facts showing the manner in which the petitioner has been carrying on such activities, the result whereof is that people belonging to lower strata of the society have been cheated by paying huge amounts as compared to their financial conditions. It is under such circumstances that the petitioner has been declared as the property grabber u/s.2(h) of the PASA Act and by alleging that the petitioner's activity is also covered under the definition of unauthorised structure appearing in Section 2(i) of the PASA Act.

3. After this matter came up for hearing before this Court the petitioner, through his learned Advocate, voluntarily filed following purshis :

"The petitioner is ready to deposit Rs.15,000/- before this Honourable Court unconditionally. So, kindly permit him to deposit the same. The petitioner will co-operate with the Government."

Thereupon following order was passed by this Court on 3.9.1996 :

"By order dated 16th September 1995 the petitioner Somaji Manaji Chauhan came to be detained u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No.16 of 1985), hereinafter referred to as "the PASA Act, on the ground that the petitioner indulged in property grabbing inasmuch as the property/land bearing final plot Nos.287 and 292 of Vejalpur Town Planning Scheme No.3 stood unauthorisedly alienated through the petitioner and unauthorised constructions were made thereon through the medium of the petitioner.

Today the learned Advocate for the petitioner has given purshis, under the instruction from his client, stating therein that the petitioner is ready to deposit Rs.15,000/- before this Court unconditionally and that

the petitioner would co-operate with the Government. This purshis has been given on the basis of the submissions made by the learned Advocate that at best the petitioner had earned some commission with respect to portion of the land as an agent/intermediary and that he would make good a sum of Rs.15,000/- which is alleged to be lying with the petitioner.

For the present the petitioner is permitted to deposit Rs.15,000/- in this Court. Office to accept the same.

The petitioner's learned Advocate has no objection for paying over the amount by A/c. Payee Cheque to respondent No.1 in order to enable him to pay it over to AUDA.

4. In the background of the aforesaid facts and circumstances of the present case the matter has been heard on merits.

5. It has been submitted on behalf of the petitioner that the petitioner found number of documents being not legible at all as set out in his representation Annexure : D and that he demanded legible copies by his representation dated 12.4.1996 (Annexure : D). He also demanded those documents which were not at all supplied to him by the said representation. On a reference to the representation at Page : 26 it further appears that the petitioner had demanded with detailed particulars the legible copies of the relevant documents as also the translation of the particular documents and finally also the copies of the documents which were not supplied to him. Out of this ground of challenge to the impugned order of detention Mr.V.H.Patel, learned Advocate for the petitioner in the first instance canvassed the ground with regard to illegible documents being pages Nos.35, 41, 45, 47, 49, 51, 61, 65, 67, 73, 75, 77, 79, 80, 87, 89, 91, 93, 103, 119, 121, 125, 127, 129, 161, 169, 171, 173, 189, 211, 239, 261, 262, 269, 270, 274, 277, 282, 285, 286, 289, 290, 302, 306, 357, 389, 423, 424, 425, 426, 444, 445, 446, 453, 454, 457, 463, 467, 477, 487, 488, 495, 498, 519, 523, 524, 532, 533, 535, 540, 548, 569, 570, 581, 586, 587, 681, 697, 711, 725, 813, 816, 817, 890, 894, 901, 902, 903, 904, 945, 946, 1040, 1041, 1097, 1098, 1102 and 11442.

6. Mr.K.C.Shah, learned A.G.P. for the respondents on going through the copies of documents supplied to the petitioner detenu fairly submits that most of the copies

are not completely legible, with the result that it would not have been possible for the petitioner to make effective representation. Reference in this connection has been made to a decision of this Court in the case of Pokhrajbhai Sohanbhai Chandel V/s. District Magistrate, Surat, reported in 32(2) - 1991(2) G.L.R. 753, where the following observations head-noted from Para : 3 & 4 of the citation appear :

"On perusing the documents, it appears that the document at page 195 is the receipt issued by "Gujarat Rajya Nagrik Purvatha Nigam Ltd.", which is a vital document on which reliance is placed by the detaining authority. Looking to the document, it appears that it is illegible and the name of the payer on which the rubber stamp is applied, and the contents of the said rubber stamp are not legible. Learned Addl. P.P. appearing on behalf of the detaining authority was shown the document at page 195 and he fairly admitted that the said document is not legible. In view of this position, the detaining authority failed to supply legible copy of the said relevant document to the detenu for making an effective representation which has infringed the detenu's right under Article 22(5) of the Constitution."

The Division Bench of this Court placed reliance upon a decision of the Honourable Supreme Court in the case of Smt. Dharmista Bhagat V. State of Karnataka & Anr. reported in 1989 Supp. (2) SCC 155 for coming to the conclusion that failure on the part of the detaining authority to supply legible copies of the relevant document to the detenu for making effective representation would infringe the detenu's right under Art. 22(5) of the Constitution of India. In my opinion the said decision applies to the aforesaid ground of challenge to the impugned order of detention canvassed on behalf of the petitioner.

7. In view of what is stated above this petition is required to be allowed. The impugned order of detention is, therefore, quashed and set aside and the petitioner detenu - Somaji Manaji Chauhan is ordered to be set at liberty forthwith unless required for any other case. The deposited amount of Rs.15,000/- shall be verified and paid over by A/c. Payee Cheque drawn in favour of the Collector, Ahmedabad, in order to enable him to pay it over to AUDA. Rule made absolute accordingly.

Direct service permitted.

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